IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 24041 of 2006(K)

OPMV.287/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

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PETITIONER:

P.MADHAVA MENON, AGED 61, S/O. POTTAYIL
NARAYANA KARTHA, PERIGOTUKARA DESOM,
THANIYAM VILLAGE, THRISSUR TALUK.
INDEX CHITS AND FINANCE (P) LTD., NATTIKA,
THRIPRAYAR, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. SUKUMARAN, S/O. RAMAN,
CHETTIYAKKARA HOUSE, NATTIKA BEACH,
NATTIKA VILLAGE, CHAVAKKAD TALUK.

2. SURENDRAN, S/O. NARAYANAN,
PUTHUVELIL HOUSE, NEAR NATTIKA COTTON MILLS,
NATTIKA VILLAGE DESOM, CHAVAKKAD TALUK.

3. M/S. NEW INDIA ASSURANCE CO. LTD.,
S.S.N. SHOPPING COMPLEX, TEMPLE ROAD,
THRIPRAYAR, P.O.NATTIKA.

ADDL. 4. SAVITHRI, W/O.SURENDRAN,
PUTHUVELIL HOUSE, NEAR NATTIKA COTTON MILLS,
NATTIKA VILLAGE DESOM, CHAVAKKAD TALUK.

ADDL. 5. PRASAD, S/O.SURENDRAN,
PUTHUVELIL HOUSE, NEAR NATTIKA COTTON MILLS,
NATTIKA VILLAGE DESOM, CHAVAKKAD TALUK.

ADDL. 6. SUNILKUMAR, S/O.SURENDRAN,
PUTHUVELIL HOUSE, NEAR NATTIKA COTTON MILLS,
NATTIKA VILLAGE DESOM, CHAVAKKAD TALUK.
(R4 TO R6 ARE IMPLEADED AS ADDL. RESPONDENTS 4 TO 6 AS PER ORDER DT.16.07.07 IN IA NO.7509/07)

BY ADV. SRI.M.B.PRAJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER PASSED IN IA NO.2950/04 IN OP (MV) NO.287 OF 2000 DATED 30.06.06 ON THE FILE OF THE MACT, THRISSUR.

EXT.P2 : TRUE COPY OF THE ORDER PASSED IN IA NO.2949/04 IN OP(MV) NO.287 OF 2000 DATED 30.06.06 ON THE FILE OF THE MACT, THRISSUR.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 24041 OF 2006

Dated this the 31st day of July, 2007

JUDGMENT

Exts.P1 and P2 orders under which the Motor Accident Claims Tribunal refused to condone the delay of 280 days caused in the matter of filing the application to set aside ex-parte award and dismissed the application to set aside the ex-parte award are under challenge in this Writ Petition under Article 227. Even though notice was served on the 3rd respondent, Insurance Company, there is no appearance for that Company before this Court.

2. Heard Sri.G.Sreekumar, learned counsel for the petitioner and Sri.M.B.Prajith, learned counsel for the 1st respondent. It is conceded that the 1st respondent applicant before the MACT has already received the award money. But under the award the Insurance Company is given the right to recover the amounts from the petitioner who is found to be the owner of the vehicle in question. Sri.G.Sreekumar would submit that the document of hire purchase was produced before the MACT and that document will clearly show that the transaction between the petitioner and the other parties was only one of hire purchase. A copy of the hire purchase agreement was placed before me by Sri.G.Sreekumar and I have gone through the same. Having gone

through the hire purchase agreement, I am of the view that the case of the petitioner that the petitioner was not the real owner of the vehicle merits consideration.

Under these circumstances, I set aside Exts.P1 and P2, However, the same is being done only on condition that the petitioner pays a sum of Rs.1,000/- to the High Court Legal Services Committee. I would have been inclined to direct payment of cost to the Insurance Company also but I am not doing so, since they have not chosen to enter appearance in this court. Exts.P1 and P2 will stand set aside and I.A. Nos.2950 and 2949 of 2004 in OP (MV) No.287 of 2000 will stand allowed on condition that the petitioner pays a sum of Rs.1,000/- to the High Court Legal Services Committee within three weeks of receiving copy of this judgment. Once it is seen that the payment is made as directed above, the MACT will repost MV(OP) for consideration and dispose of the same on merits, i.e., in the light of the contentions raised by the petitioner. The MACT will ensure that the fresh award to be passed does not cause any prejudice to the 1st respondent in the MACT.

PIUS C. KURIAKOSE, JUDGE

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